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WILLKIE FARR & GALLAGHER LLP

ORIGINAL

1875 K Street, NW  
Washington, DC 20006-1238  
Tel 202 303 1000  
Fax 202 303 2000

EX PARTE

May 5, 2004

**VIA HAND DELIVERY**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation in CC Docket No. 96-115

Dear Ms. Dortch:

On behalf of the Association of Directory Publishers ("ADP"), I am writing in response to the April 23, 2004, letter from the Yellow Pages Integrated Media Association ("YPIMA"). YPIMA has asked the Commission to "make[] clear that, within a contract for the sale and use of SLI, carriers can: 1) require that the SLI be used only by the entity purchasing the SLI; 2) require that the SLI be used only for publishing directories specified in the contract; 3) prohibit resale and third party use of SLI; and 4) require liquidated damages."<sup>1</sup> As described in ADP's pleadings in this proceeding, there is no record of publisher misuse of SLI.<sup>2</sup> As the sole source of SLI for their subscribers, carriers have sufficient market power to ensure in any contract with a publisher that there are adequate contractual provisions to protect the SLI from misuse. However, any contractual provisions that carriers include in their contracts with publishers must be consistent with Section 222(e). The provisions proposed by YPIMA may not be consistent with Section 222(e) and could provide carriers with an opportunity for anticompetitive behavior. For example, a provision requiring that SLI be used only by the entity purchasing the SLI would prevent publishers from using third party agents to process the data. A limitation on use of the SLI only for the directories specified in the contract would prevent publishers

<sup>1</sup> See YPIMA Letter in CC Docket No. 96-115, at 1 (filed Apr. 23, 2004).

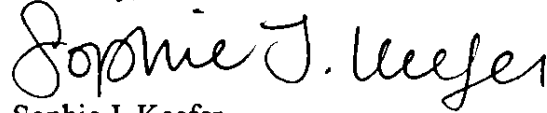
<sup>2</sup> See Consolidated Oppositions and Comments of the Association of Directory Publishers in CC Docket No. 96-115, at 2-3 (filed Jan. 11, 2000); Reply of the Association of Directory Publishers to Oppositions and Comments in CC Docket No. 96-115, at 7 (filed Jan. 21, 2000).

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from maintaining their own database of listings and refreshing it with updates.<sup>3</sup> It would permit carriers to charge publishers each time SLI is used to publish a directory, which is specifically prohibited by the Commission's rules.<sup>4</sup> A prohibition on third party use of SLI does not make sense in light of the fact that SLI is specifically purchased for publication in a telephone directory to be used by the public. Liquidated damages may not always be reasonable and must be proportionate to the anticipated harm. A blanket assertion by the Commission that liquidated damages provisions are always reasonable would not be appropriate. In sum, the Commission should not grant the relief requested by YPIMA.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an original and one copy of this letter are being filed for inclusion in the public record of the above-referenced proceeding. Should you have any questions, please do not hesitate to contact me at (202) 303-1142.

Sincerely,



Sophie J. Keefer

cc: Scott Bergmann  
Matthew Brill  
Jeffrey Carlisle  
Daniel Gonzalez  
Marcy Greene  
Trey Hanbury  
Bill Kehoe  
Christopher Libertelli  
Jessica Rosenworcel  
Ann Stevens

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<sup>3</sup> *In re* Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, *Third Report and Order*, 14 FCC Rcd 15550, at ¶ 116 (1999).

<sup>4</sup> *Id.* at ¶ 90